[FR] Misleading and Unlawful Nature of Advertising for Unlimited Internet Access

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As the number of French homes wanting to obtain Internet access is increasing constantly, access providers regularly make ever more competitive connection offers to meet the large-scale demand. Thus, during the summer of 2000, the company AOL advertised an offer, valid for several months, of unlimited Internet access for FRF 99.00 per month, inclusive of access and phone time. The offer was very successful, rapidly generating not only a large number of new subscriptions but also, as a result, connection problems that were widely reported in the press and acknowledged openly by the access provider. To alleviate these problems, the company had introduced two specific techniques. The first consisted of a "session modulator" which disconnected users after half an hour, leaving them unable to resume the connection. The second involved the introduction of a "timer" - an inactivity screen requiring users to confirm their presence in order to keep the connection open after a certain amount of time had elapsed. In a case brought by the Union fédérale des consommateurs (UFC), an important consumer group, the regional court in Nanterre has now fined the access provider FRF 250,000 for misleading advertising, on the grounds that, by using these two techniques, connections were limited. In analysing the deal offered by AOL, the court noted that it differed from the many competitive offers in that it offered unlimited access. It was this distinguishing feature which constituted the main attraction of the AOL offer and which the court interpreted in a very broad sense, in favour of subscribers. The session modulator used, which allowed the access provider to interrupt a connection at its discretion, limited the subscriber's freedom to surf the web without hindrance. The "timer" also hampered this freedom, because it required human intervention in order to keep the connection open beyond a certain amount of time. The fact that AOL included a clause in its contracts reserving the right to amend or discontinue certain aspects of the service at any time, and a notice to the effect that the company did not guarantee in any way that subscribers would be able to achieve access whenever and wherever they liked, made no difference to the assessment of the misleading nature of the advertising; nor did the technical difficulties encountered by the operator. In order to ensure the dissemination of its decision, the court acceded to the application for publication entered by the consumer group. As the court had found AOL guilty of the offence of misleading advertising referred to in the plaintiff's summons, this could be mentioned in the publication, but as the court had not found AOL guilty of breaching trust on a large scale, publication of

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this part of the summons would constitute defamation and would have to be deleted from the wording of the official notice when it was published.

TGI Nanterre, (ordonnance de référé), 20 février 2001 - Union fédérale des consommateurs Que Choisir, P. Cure Boulay, N. Gauthereau c/ SNC AOL France

Regional court of Nanterre, order delivered in an urgent matter, of 20 February 2001 Union fédérale des consommateurs Que Choisir, P. Cure Boulay, N. Gauthereau v. SNC AOL France

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